IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 899 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAVJIBHAI MATHURBHAI VASAVA

Versus

STATE OF GUJRAT

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Appearance:

1. Criminal Appeal No. 899 of 1995

MRS SHILPA J UNWALLA for appellants No. 1-5

MS DEVANI, APP, for the respondent.

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CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: / /2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellants herein were the accused before the learned Additional Sessions Judge, Bharuch, in Sessions Case No.18 of 1995, who came to be convicted for various offences by virtue of a judgment and order rendered on September 5, 1995, by the learned Additional Sessions Judge, Bharuch. The accused persons were tried and convicted for offences punishable under Sections 143, 147, 148, 302 read with Section 149 and 326 read with Section 149 of the Indian Penal Code. Rigorous imprisonment for three months, six months and one year was imposed on them for the offences punishable under Sections 143, 147 and 148 of I.P.C., respectively. They were ordered to undergo imprisonment for life and to pay a fine of Rs.200/-, in default, to undergo rigorous imprisonmment for six months for offence punishable under Section 302 read with Section 149 of I.P.C. and were ordered to undergo rigorous imprisonment for two years and to pay a fine of Rs.200/-, in default, to undergo rigorous imprisonment for six months for the offence punishable under Section 326 read with Section 149 of I.P.C.

2. As per the prosecution case, the incident occurred on September 2, 1994, at about 15.30 hours, at village Karmali, when the appellants are alleged to have formed an unlawful assembly with the common object of committing murder of deceased-Rameshbhai Bhagubhai Vasava and causing grievous hurt to his wife-Kamlaben Rameshbhai Vasava. It is further the case of the prosecution that the appellants, after forming an unlawful assembly and armed with Dharia, axe, stick, Dharia and axe, respectively, assaulted upon deceased Ramesh Bhagubhai and caused fatal injuries to him. During the transaction, they also caused grievous hurt to Kamlaben, wife of Rameshbhai. Immediately after the incident, Kamlaben went to her house, got her injury bandaged and rushed to the Police Station and lodged an F.I.R. implicating the appellants. On basis of the said F.I.R., offence was registered and investigation made. The police, having found sufficient evidence against the appellants, filed charge sheet before the learned Judicial Magistrate, First Class, who, in turn, committed the case to the Sessions Court, as the offences were triable, exclusively, by a Court of Sessions and Sessions Case No.18 of 1995 came to be registered. Learned Additional Sessions Judge framed charges against the appellants, at Ex.2, to which they pleaded not guilty and claimed to be tried. After considering the evidence on record, the learned Additional Sessions Judge came to a conclusion that the charges against the accused persons

were established and, therefore, recorded conviction and awarded sentence as stated above. Aggrieved by the said judgment and order, present appeal is preferred.

3. The appellants were respectively accused Nos.1 to 5 before the Trial Court and, for the sake of convenience, they are addressed to as "the accused" in this judgment hereafter. Learned Advocate, Mrs. Unwalla, appearing for the appellants submitted that the case hangs on solitary evidence of Kamlaben, widow of Rameshbhai, examined at Ex.11. She submitted that, Kamlaben does not name the person who informed her about the incident. Mrs. Unwalla submitted that this witness could not have, in fact, witnessed the incident, if the time factor is considered. She further submitted that, Kamlaben heard shouts and, thereafter, she was informed by someone about the incident, whereafter, she went to the place. By that time, the incident ought to have been over and she could not have seen the actual infliction of injuries by any of the accused, as is claimed by her. Mrs. Unwalla also submitted that the motive is not correctly stated by the witness. Our attention was drawn to the Panchnama of place of incident to emphasis that the incident could not have been witnessed by this witness because of a thick line of Babool Trees. It was contended that Radhiben, who claims to have reached the place of incident soon after the incident, also could not have seen the incident. She is the mother of the deceased and, therefore, an interested witness and her deposition also ought not to have been believed by he Trial Court. Mrs. Unwalla submitted that witness-Lakhiben and Chhotubhai (Ex.19 and 18, respectively) have not supported the prosecution case. The learned Trial Judge, therefore, committed an error in not appreciating this witness in the prosecution case. It was, therefore, contended that the appeal may be accepted.

4. Learned Additional Public Prosecutor, Ms. Devani, has opposed this appeal. She submitted that, Kamlaben, only because she happens to be wife of the deceased, cannot be disbelieved on allegation of either interested witness or chance witness. She submitted that presence of Kamlaben at the time of the incident is established by virtue of grievous hurt sustained by her in the transaction. Ms. Devani submitted that this witness has no reason to falsely implicate the accused and let go a real culprit. Likewise the evidence of Radhiben is also natural. She does not say that she had seen the actual act of infliction of injuries, but she claims to have seen the dead body being dragged by the

accused persons and the factum of the accused persons armed with deadly weapons. Ms. Devani, therefore, submitted that the Trial Court has, in fact, appreciated all these aspects and has recorded conviction. No interference is called for in the judgment and order under appeal and the appeal may, therefore, be dismissed.

5. We have closely scritinized the record and proceedings. It is true that the prosecution case mainly depends on the evidence of Kamlaben and Radhiben. Kamlaben is examined at Ex.11. She is the widow of deceased Rameshbhai Bhagubhai. She says that the incident occurred on September 2, 1994, at about 3.30 in the afternoon. She says that, she was at home with her son-Yagnesh. She says that her husband was also at home and he went out asking her to arrange for money to enable him to go to his sister's place. She heard shouts near the house of Jaymal and she was told by a passer-by that Ravji Mathur and others are quarrelling with her husband. She, therefore, ran out in the street and saw that her husband being beaten by Ravji Mathur with Dharia, Ambu Mathur with axe, Nagin Mathur with stick, Raman Mathur with Dharia and Vithal Mathur with axe. She, therefore, intervened. Ravji Mathur, therefore, gave a Dharia blot on her right wrist. Her right hand was, therefore, cut. Nobody from the neighbourhood co-operated. Because of the assault, her husband fell down and succumed to the injuries. The accused persons dragged the dead body of her husband near the bushes. She went home, got her injury bandaged by Lakhiben and then she went to Nabipur Police Station for loding complaint. She says that, she had put her thumb impression on the F.I.R. as her hand was cut near the wrist. She identifies the accused persons as the assailants. She also identifies the muddamal. During cross-examination, series of questions have been put on topography and distance point. She firmly denies the suggestion that, whe she reached the place of incident, she saw her husband lying in an injured condition. She affirms and re-affirms that she saw her husband being beaten by the accused persons. She says that, she exactly cannot say the number of blows given with axe or other weapons, but they must have given about 15 to 16 blows. It comes in cross-examination that she sustained grievous hurt when she intervened to protect her husband being beaten by the accused. In substance, the witness sticks to her version and has remained unshaken during the cross-examination. She clearly and unequivocally implicates all the accused persons.

5.1 There is no reason to disbelieve the evidence of

this very witness. Her presence is natural. She says that, on hearing the shouts, she rushed out into the street to notice the accused persons assailing the deceased. She not only has seen the incident, but has intervened and they say of her is supported by contemporaneous evidence, namely, she herself sustained grievous hurt at the hands of the accused. There is no reason to conclude that she has falsely implicated the accused, letting loose the real culprit. Her deposition along with her injury and unshaken version in cross-examination render her deposition unimpeachable. We are, therefore, inclined to accept the deposition, as has been done by the learned Trial Court Judge.

6. So far as witness-Radhiben is concerned, she is the mother of the deceased. She also rushed to the spot on hearing shouts and noticed that the accused persons were all armed with deadly weapons. She also speaks of the accused persons dragging the dead body near the bushes and this version given by this lady also does not seem to be a piece of imagination or concoction. There is a ring of truth in the depositions of these two witnesses and we do not find any infirmity in their deposition.

7. It is true that, the case of eye-witness-Kamlaben, that she, on sustaining injury and on death of her husband, went home and got her injury bandaged by Lakhiben before going to the Police Station is not supported by Lakhiben and she has turned hostile. However, if deposition of Dahyabbhai Kalodas (Ex.26) is seen, he is the person who recorded the F.I.R. and he says that he had noticed that Kamlaben had injury on her hand. In addition to that, there is medical evidence and, therefore, simply because Lakhiben does not support the case of Kamlaben, the deposition of Kamlaben cannot be thrown overboard.

8. The prosecution has established the cause of death of the deceased to be an outcome of injuries sustained by him in the transaction by examining Dr. Vinaychandra Lallubbai Patel (Ex.13). He is the doctor who had performed post-mortem on the dead body of Rameshbhai and had given treatment to witness-Kamlaben as well. The witness says that he had noticed as many as ten external and five internal injuries. According to him, injuries No.1 to 3 were sufficient in ordinary course of nature to cause death. These injuries were on vital parts of the body. He also describes other injuries.

9. The evidence of Kamlaben was assailed on one more count, namely, exaggerated version given by her in examination-in-chief. She had stated in her deposition that about 15 to 16 blows were given on the deceased, whereas the medical evidence does not support this. In our opinion, when it is established by other circumstantial contemporaneous material, a little exaggeration will not render the deposition unbelievable. A pinch of salt or a frill or embroidery is not uncalled for and, at times, it is added out of fear of being disbelieved. The Apex Court, in the case of AIR 1988 SC 1998 has observed in paragraph 15 as under :-

"15. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses."

10. We have also gone through the judgment and order impugned before us. We are in agreement with the reasonings adopted and conclusions arrived at by the learned Triall Judge.

11. For the reasons stated hereinabove, in our view, no interference is called for in the judgment and order. The conviction and the sentence recorded by the Trial Court deserves confirmation and the appeal deserves dismissal. The appeal is, therefore, dismissed. The judgment and order of conviction and sentence recorded by the Trial Court is hereby confirmed.

[ J.N. BHATT, ACTG. C.J. ]

[ A. L. DAVE, J. ]

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